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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SAN DIEGO COUNTY DEPARTMENT OF
CHILD SUPPORT SERVICES,

Plaintiff and Respondent,

v.

RICHARD A. JACKSON,

Defendant and Appellant.

D056635

(Super. Ct. No. DF096421)

APPEAL from an order of the Superior Court of San Diego County, Patti C. Ratekin, Commissioner. Reversed and remanded.

Richard A. Jackson, an inmate imprisoned in Nevada, appeals from an order denying as untimely his motion to set aside a 1998 child support judgment that the San Diego County Department of Child Support Services (Department) obtained by default. Jackson asserts the trial court erred in denying his motion because the Department never served him with the summons and complaint. Although the Department opposed the

motion below, it now concedes that Jackson timely filed the motion and requests that the matter be remanded for a hearing on the merits. We agree and reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998 a governmental complaint was filed alleging that Jackson was the father of four minor children. The complaint sought current and retroactive child support in the amount of \$824 per month. A registered process server purportedly served Jackson with the summons and complaint on April 8, 1998. When Jackson failed to timely answer the complaint, the trial court entered a default judgment against him a few months later.

Jackson was arrested in 2000, and he has been incarcerated since that time. In September 2008, Jackson received a billing statement from the Department for past due child support. The following month, Jackson wrote to the Department and the superior court seeking a copy of the summons and complaint, proof of service, and order. Thereafter, Jackson corresponded with the Department and the superior court regarding the matter. Finally, on May 27, 2009, Jackson received a letter from the Family Law Facilitator representing that he had been personally served at a certain address in Spring Valley, California on April 8, 1998. The letter also provided instructions on filing and serving an appropriate motion to set aside the judgment.

On November 2, 2009, the trial court denied Jackson's motion to set aside the default judgment as untimely filed. Jackson appeals from this order.

DISCUSSION

Jackson contends the trial court abused its discretion in denying his motion because he adequately demonstrated that the court entered the judgment based on a

fraudulent proof of service. Jackson claims that he could not have been personally served with the summons and complaint for child support at the Spring Valley address on April 8, 1998, because he had been evicted from that address in 1995. Jackson also asserts the trial court deprived him of the right to due process by denying him the opportunity for a meaningful hearing, and not ruling on his motion for appointment of counsel.

The trial court concluded that Jackson's motion was untimely and never reached its merits. The Department concedes, and we agree, that the order must be reversed and the matter remanded for a hearing on its merits.

A motion to set aside a support order based on actual fraud is timely if it is "brought within six months after the date on which the complaining party discovered or reasonably should have discovered the fraud." (Fam. Code, § 3691, subd. (a).) Here, Jackson learned about the purported fraudulent proof of service in a letter dated May 27, 2009. Jackson timely filed his motion to set aside the judgment about four months later on September 24, 2009. Accordingly, the order denying Jackson's motion as untimely must be reversed, and the matter remanded for a hearing on the merits of the motion. As a result, Jackson's due process claims are moot.

DISPOSITION

The order is reversed and the matter remanded for further proceedings consistent with the views expressed in this opinion. Jackson is entitled to costs on appeal.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.